

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MATTHEW FRANZINO BOLAR,)	
)	
Petitioner,)	Case No. C05-2029-TSZ-JPD
)	
v.)	
)	
F. LUNA et al.,)	ORDER DENYING PETITIONER'S
)	REQUEST TO CONDUCT
Respondents.)	DISCOVERY
)	

This matter comes before the Court upon petitioner's motion to conduct discovery in this 28 U.S.C. § 2254 petition for writ of habeas corpus.¹ Dkt. No. 29. Petitioner seeks to verify the identify of the author of a psychiatric report admitted during his trial. *Id.* Petitioner alleges, among other things, that the author does not exist and that the report was fraudulent. *Id.*; *see also* Dkt. No. 8, Claim No. 6. Respondent argues that petitioner has failed to exhaust this claim and that he has not shown good cause to permit discovery. Dkt. No. 33. Having carefully reviewed the parties' papers, supporting documents, and balance of the record, the Court ORDERS as follows:

(1) Petitioner's request to conduct discovery (Dkt. No. 29) is DENIED at this time. Unlike ordinary civil litigants, habeas petitioners enjoy no right to discovery. *Bracy v. Gramley*, 520 U.S. 899, 904 (1997); *Bittaker v. Woodford*, 331 F.3d 715, 728 (9th Cir. 2003)

¹On June 22, 2006, petitioner filed a motion to file an overlength brief (one additional page) in connection with this motion. Dkt. No. 35. That request is denied. Petitioner's thirteen page motion was adequate and, as discussed below, discovery is not appropriate at this time.

(en banc) (internal citations omitted). Petitioners may, however, be granted leave to conduct discovery “if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise.” Rules Governing Section 2254 Cases in the United States District Courts 6(a). The district court therefore retains discretion to ensure the petitioner’s claims are given “careful consideration and plenary processing, including full opportunity for presentation of the relevant facts.” *Williams v. Woodford*, 384 F.3d 567, 590 (9th Cir. 2004) (internal citations and quotations omitted).

Allowing discovery on this matter at this point in the case is premature. Among other things, the parties dispute whether the claim at issue in this motion has been properly exhausted. Because the petition raises twenty-nine other grounds for relief that also require exhaustion analysis, addressing the exhaustion issue on this particular claim and allowing discovery would lead to an unnecessarily duplicative analysis and inefficient use of judicial resources. This is particularly true if the Court determines that discovery on other claims is also necessary. The Court therefore denies the motion at this time.

Once petitioner submits his reply, the Court will determine what claims have been properly exhausted. The Court will then determine what claims, if any, require further factual development and direct that appropriate discovery, if any, be conducted at that time. This process will facilitate an efficient resolution of this complex petition and ensure petitioner has a “full opportunity for presentation of the relevant facts.” *Williams*, 384 F.3d at 590.

(2) The Clerk is directed to send a copy of this order to the parties and to the Honorable Thomas S. Zilly.

DATED this 28th day of June, 2006.


JAMES P. DONOHUE
United States Magistrate Judge